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In re Application of:
JIN YEAL CHOI
 Serial No.: 09/878,321
 Filed: 12 June 2001
 Title: ELECTRON GUN FOR A COLOR BRAUN-TUBE

DECISION ON PETITION
 TO WITHDRAW HOLDING
 OF ABANDONMENT

This is a decision on the petition filed on August 20, 2004, to withdraw the holding of abandonment of the above-identified application under 37 C.F.R. § 1.181.

The petition to withdraw the holding of abandonment is **GRANTED**.

An Office action (final rejection) was mailed on December 22, 2003, setting a three-month statutory period for reply. In the absence of a response, the application became abandoned as a matter of law on June 22, 2004.

Petitioner asserts that counsel did not receive the Office Action. In support of the assertion, petitioner submitted as evidence of lack of receipt of the Office action a statement from the practitioner stating that the Office communication was not received by the practitioner.

A review of the file record indicates that the Office action mailed on December 22, 2003, was returned to the Office (having a USPTO "received" stamp of January 6, 2004).

The Office procedure for handling returned actions is set forth in MPEP § 707.13:

Office actions are sometimes returned to the Office because the United States Postal Service has not been able to deliver them. The examiner should use every reasonable means to ascertain the correct address and forward the action again, after stamping it "remailed" with the date thereof and redirecting it if there is any reason to believe that the action would reach applicant at such new address. If the Office action was addressed to an attorney, a letter may be written to the inventor or assignee informing him or her of the returned action. The period running

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against the application begins with the date of remailing. Ex parte Gourtoff, 1924 C.D. 153, 329 O.G. 536 (Comm'r Pat. 1924).

Since the Office failed to use reasonable means to ascertain the correct address and forward the action again, the Office bears the responsibility for petitioner's lack of notice. For this reason, the Notice of Abandonment is hereby vacated, and the holding of abandonment withdrawn. Inconvenience to the applicant is regretted.

The application will be directed to the examiner for remailing of the Office action as requested by petitioner. The date for reply will be reset to the date of remailing of the Office action.

Any inquiry regarding this decision should be directed to Lissi M. Marquis, Special Program Examiner, at (571) 272-1596.



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